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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ALAN EDWARD BERENSON** 35021 Willow Springs Dr. Yucaipa, CA 92339 Registered Nursing License No. 553120, Respondent.	Case No. 2009-208 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about March 11, 1999, the Board of Registered Nursing ("Board") issued Registered Nursing License No. 553120 to Alan Edward Berenson ("Respondent"). The Registered Nursing License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct . . . ."

6. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . . .

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license."

7. Section 2764 provides, in relevant part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

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COST RECOVERY

8. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. **CONTROLLED SUBSTANCES**

a. "Valium," is the trade name for diazepam, a benzodiazepine derivative. It is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(9), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

b. "Vicodin," is the trade name for hydrocodone bitartrate and acetaminophen. It is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(7), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

10. **DANGEROUS DRUGS**

a. "Flexeril," is the brand name for cyclobenzprine and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

b. "Desyrel," is the brand name for trazodone and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Under the Influence of a Controlled Substance)

9. Respondent is subject to disciplinary action under section 2761, subdivision (a), as defined in section 2762, subdivision (b), in that while employed as a registered nurse at Loma Linda University Behavioral Medicine Center ("LLUBMC"), in Loma Linda, CA, Respondent was under the influence of a controlled substance, as follows:

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June 25, 2004

a. Respondent was observed by Herman Johle, R.N. (RN Johle) to have slow, deliberate, and slurred speech. His body movements were slow and deliberate. His eyes were glassy and his pupils were pinpoint. Respondent failed to sign 24-hour nursing flow sheets (all patients), some "RBTO's" were written improperly, lab orders were not completed, admit notes and "tx. plans" on all 3 p.m. shift admits had to be done by R.N. Supervisor Jim Burkes. In addition, Respondent failed to make Patient F.H., a patient that had fallen and lacerated his head, a level IV patient in the early p.m. shift.

b. Respondent was observed by Jean Beverage, L.V.N. (LVN Beverage) leaving the unit and stated that a patient was just sent out. He appeared to be distracted. Respondent was the charge nurse that found the patient, but failed to complete the event report of the incident. Respondent's eyes were glassy and his pupils were pin-point. His speech was slow, slurred, and deliberate. Respondent's movements were also slow. The incident report regarding the patient went unsigned. Respondent failed to give pertinent information (vital signs) and reported low blood pressure and patch being removed from the wrong patient.

c. Respondent was observed by Wendi Groth, R.N. (RN Groth) to have a blank look on his face, spoke slowly, failed to answer questions or gave basic and simple answers, and appeared to be under the influence of a sed-hypnotic or depressant. As the evening progressed, Respondent continued to process information slowly, showed poor judgment, had a flat affect, starred off into space, had slightly slurred speech, and left the unit for ten minutes, almost every hour. He moved slower and was unable to provide guidance as the charge nurse due to his blank stares and/or ineffective answers to questions. Respondent's lack of judgment in assessing the condition of Patient F.H. and making him a level IV patient, caused F.H. to deteriorate throughout the shift and bleed from a big gash on his head, which led F.H. to require an ambulance instead of merely a "1:1" nurse-to-patient care.

June 26, 2004

d. At 8:12 p.m., RN Groth observed Respondent leaving the unit more frequently, without notifying the staff, and returning 5-15 minutes later. Respondent became

easily agitated and would curse and verbalize his disinterest in the patient's signs and symptoms. By 10:00 p.m., Respondent exhibited slurred speech, a slightly staggering gait, a blank look on his face with his mouth slightly open, answered questions slowly, and appeared to be confused when asked for guidance related to patient medications.

June 27, 2004

e. At 12:10 am, Pamela Cork, Nurse Manager (Cork) received a call from RN Johle, LVN Beverage, and RN Groth, indicating their concern that Respondent was "loaded" during the p.m. shift. RN Johle stated that when he arrived on the unit, Respondent was stumbling, had slurred speech, and was incoherent. RN Groth stated she told the supervisor during the p.m. shift of her concerns.

f. At 2015 hours, Respondent was observed by RN Groth going out to his car more frequently and without telling staff that he is leaving the unit, cursing, and acting strangely.

g. At 2205 hours, Respondent was observed by Bob Cox, House Supervisor to be impaired, with slurred speech, stumbling, and rambling.

h. At 2220 hours, Respondent was observed by Cork, after arriving on the unit, to have a slow and unsteady gait.

i. At 2250 hours, Respondent met with Director Art Earll (Earll) and Cork and denied using drugs before or during his shift. He admitted to using vicodin five to seven days before and benadryl the night before. He continued to complain of pain from a prior surgery and admitted to leaving the unit without telling staff to smoke and go out to his car. He was resistant to go to the emergency room for drug screening and only agreed after Earll and Cork spoke with R.N. Administrator Jill Pollock.

June 28, 2004

j. Respondent's drug screen results were received under the alias "Alex Brown" that Respondent reported he used in the emergency room. The results reflected positive readings for benzodiazapines and opiates.

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August 23, 2006

k. In an interview with a Senor Investigator at a Department of Consumer Affairs field office, Respondent admitted that during the period of June 25, 2004 through June 27, 2004, he was impaired while practicing nursing at LLUBMC and under the influence of prescription medications. He acknowledged that had he observed similar behavior in another hospital employee, he would have reported it to his superior.

l. Respondent was asked to voluntarily submit to a urinalysis by providing a urine specimen. Respondent indicated to the Board investigator that he was currently taking various prescription medications for his medical condition. Respondent was asked to complete an alcohol/controlled substance use questionnaire listing his medications. Respondent indicated that he was currently taking Hydrocodone, Valium, Flexeril, and Trazodone.

August 28, 2006

m. Respondent's drug screen results were received and reflected positive readings for Benzodiazapines, which is consistent with the Valium that was previously reported.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

10. Respondent is subject to disciplinary action under section 2761, subdivision (a), in that Respondent engaged in unprofessional conduct by practicing nursing while impaired and under the influence of a prescription medication. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, as though set forth fully.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 553120, issued to Respondent;

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 3/23/09

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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